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NG CHIK VOON & ORS v. STRONGHOLD CYCLES SDN BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
ELAINE YAP CHIN GAIK JC
[ORIGINATING SUMMONS NO: BA-24NCC-120-10-2023]
31 JANUARY 2025

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Abstract – *Section 346 of the Companies Act 2016 affords protection to the minority shareholder in response to the rule of the majority in the conduct of the affairs of the company, according to Foss v. Harbottle. The remedy under s. 346 is not available to majority shareholders in control. In this case, the plaintiffs, who are the majority in control, has no locus standi to start a s. 346 action at all, especially when they have already commenced another suit for the remedy they seek. Section 25(2) of the Courts of Judicature Act 1964, read together with item 11 of the Schedule to the Act, expressly recognises that a multiplicity of proceedings is regarded as an abuse of process.*

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CIVIL PROCEDURE: *Striking out – Application for – Oppression claim filed under s. 346 of Companies Act 2016 – Whether remedy available to plaintiffs as majority shareholders in control – Whether proper plaintiff rule applied – Whether plaintiffs had locus standi – Whether plaintiffs already pleaded and prayed for damages in another suit – Whether multiplicity of proceedings – Whether abuse of process – Courts of Judicature Act 1964, s. 25(2)*

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COMPANY LAW: *Oppression – Acts and conducts amounting to oppression – Oppression claim filed under s. 346 of Companies Act 2016 – Whether remedy available to plaintiffs as majority shareholders in control – Whether proper plaintiff rule applied – Whether plaintiffs had locus standi – Whether plaintiffs already pleaded and prayed for damages in another suit – Whether multiplicity of proceedings – Whether abuse of process – Courts of Judicature Act 1964, s. 25(2)*

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This was a case of an oppression claim, filed under s. 346 of the Companies Act 2016 ('CA'), by the majority shareholders of a company who also controlled the Board of Directors and the management of the company. The first defendant, Stronghold Cycles Sdn Bhd ('Stronghold'), was the subject company and was named as a nominal party represented by the same solicitors representing the plaintiffs. According to the plaintiffs, Stronghold was incorporated to operate the business of importing premium foreign motorcycles for sale through distributorships and dealerships, following from discussions held between the promoters of Stronghold, namely the tenth defendant ('KS Goh') and the plaintiffs. The plaintiffs alleged that the discussions culminated in an arrangement when Stronghold was incorporated ('arrangement') which in substance would include, *inter alia,* the following

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mutual understanding: (i) KS Goh would nominate the second defendant ('Didi Resources') to hold his shares; (ii) Didi Resources would be the entity to apply for the franchise approved permits to import the motorcycles as required from the Ministry of International Trade and Industry, and do so on behalf of Stronghold; (iii) a curated motorcycle-themed lifestyle and event space branded as 'The Gasket Alley' would be set up; (iv) Stronghold would rent the space for 'The Gasket Alley'. The plaintiffs thus contended that Stronghold was formed as a *quasi*-partnership with a legitimate expectation on the part of the plaintiffs that the arrangement would be honoured by KS Goh and Didi Resources. However, the plaintiffs submitted that the defendants had carried out various other acts that were not in line with the arrangement such as: (i) importing, distributing and dealing with premium foreign motorcycles for entities other than Stronghold, in breach of the legitimate expectation regarding the arrangement; (ii) developing the impugned hubs despite being advised against it and/or without procuring prior agreement, consent, authorisation or acquiescence from Stronghold and/or the plaintiffs; and (iii) setting up rival companies in competition with Stronghold. The plaintiffs said the above acts could be characterised as being (i) oppressive; (ii) in disregard of the interests of; (iii) unfairly discriminatory against; or (iv) otherwise prejudicial to them. There were two related actions at the High Court which were filed by the parties (i) Suit 75 filed by Stronghold and the majority shareholders against KS Goh, Didi Resources, Messrs Shaw & Co (a law firm) and Goh Brothers Motorcycles Sdn Bhd (who was appointed as the dealer by Didi Resources for some motorcycle brands); and (ii) Suit 87 filed by Goh Brothers Motorcycles Sdn Bhd against Stronghold and the majority shareholders. The defendants applied to strike out the plaintiff's action. The issues that arose were (i) whether this case fit the situation of an oppressed majority under s. 346 of the CA; (ii) whether the wrong complained of by the plaintiffs was a corporate wrong to Stronghold or to them as shareholders, and whether the resulting injury was suffered distinctly by the plaintiffs in such capacity; and (iii) whether there was a duplicity of proceedings in light of Suit 75 and therefore an abuse of process.

Held (allowing striking out applications):

(1) Section 346 of the CA affords protection to the minority shareholders in response to the rule of the majority in the conduct of the affairs of the company. Considering the purpose of the provision, the only recognised exceptions on the application of s. 346 of the CA by majority shareholders were whether their voting rights or rights of management by the majority shareholders were restricted. The law affords adequate remedies for any breach of contractual or fiduciary duties between shareholders and ultimately, any allegation of oppression could be neutralised by the company in general meetings directly or through ordinary legal proceedings against the oppressors. (paras 20, 22 & 33)

(2) The plaintiffs were not powerless to bring the state of affairs complained of to an end without a buy-out order because Suit 75 was capable of providing a complete remedy. In both actions, it was apparent that what the plaintiffs were after was full compensation in money terms, whether as purchase consideration for the shares of Stronghold in a buy-out, or as an account of profits or damages in Suit 75. The plaintiffs asserted that the defendants must account for the diversion of business and allow the plaintiffs to realise their share value in a forced buy-out. Other than the forced buy-out, this was precisely what the plaintiffs sought in Suit 75. Thus, as a matter of principle, the remedy under s. 346 of the CA was not available to majority shareholders in control. Other prevailing laws already provided adequate remedies to a majority shareholder who was aggrieved by the conduct of the minority shareholder. (paras 34-36)

(3) The plaintiffs premised their oppression claim on the existence of a *quasi*-partnership scenario advanced by the arrangement. It was a non-issue whether or not Stronghold was a *quasi*-partnership because the aspect of the arrangement said to have been breached was still in essence, the diversion of business opportunities from Stronghold. The proper plaintiff rule applied. The wrong complained of by the plaintiffs was a corporate wrong to Stronghold and the resulting injury was suffered to the same extent by all the shareholders, with the account and recovery of the unfair gains allegedly made by the wrongdoers being remedies properly belonging to Suit 75. (paras 51 & 52)

(4) The plaintiffs were the majority in control who had no *locus standi* to start a s. 346 of the CA action at all. Further, they had already commenced Suit 75 for the remedy they sought on behalf of Stronghold and to the extent the plaintiffs have any other direct loss recoverable from Didi Resources as an alleged fiduciary, that too had been pleaded in Suit 75. All of the third parties named in this action could also be impleaded in Suit 75. Thus, the irresistible conclusion was that there was no necessity for this action. The plaintiffs had literally pleaded and prayed for damages for oppression and unfair prejudice in Suit 75. Suit 75 was capable of providing a complete remedy because what the plaintiffs were after was compensation in money terms which could be achieved to the same extent in either action. (paras 56 & 57)

(5) The plaintiffs had not shown the necessity for maintaining both actions. Section 25(2) of the Courts of Judicature Act 1964, read together with item 11 of the Schedule to the Act, expressly recognises that a multiplicity of proceedings is regarded as abuse of process. Considering the timing of this action after the filing of Suit 75, this court found that it was filed exclusively to seek a buy-out order as an afterthought and this was an abuse of process. (paras 59 & 60)

Case(s) referred to:

Auspicious Journey Sdn Bhd v. Ebony Ritz Sdn Bhd & Ors [2021] 4 CLJ 721 FC ***(refd)***
Ebrahimi v. Westbourne Galleries [1972] 2 All ER 492 ***(refd)***
Foss v. Harbottle [1843] 67 ER 189 ***(refd)***
Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal [2013] 2 CLJ 277 FC ***(refd)***
Koh Jui Hiong & Ors v. Ki Tak Sang & Another Appeal [2014] 2 CLJ 401 FC ***(refd)***
Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application [1994] CLJU 279; [1994] 1 LNS 279 HC ***(refd)***
Low Cheng Teik & Ors v. Low Ean Nee [2024] 9 CLJ 171 FC ***(refd)***
Mak Siew Wei v. Yeoh Eng Kong & Other Appeals [2019] 7 CLJ 470 CA ***(refd)***
Marex Financial Ltd v. Sevilleja (All Party Parliamentary Group on Fair Business Banking intervening) [2021] AC 39 ***(refd)***
Ng Kek Wee v. Sim City Technology [2014] SGCA 47 ***(refd)***
Queensway Nominees (Asing) Sdn Bhd & Ors v. ISM Sendiran Bhd & Another Case [2024] CLJU 2544 CA ***(refd)***
Tai May Chean v. New Way Capital Sdn Bhd & Anor And Another Appeal [2019] 9 CLJ 477 CA ***(refd)***
The Bank Of Nova Scotia Bhd & Anor v. Lion DRI Sdn Bhd & Ors [2021] 2 CLJ 400 HC ***(refd)***

Legislation referred to:

Companies Act 1965 (Repealed), s. 181
Companies Act 2016, ss. 346, 347
Courts of Judicature Act 1964, s. 25(2), item 11 of the Schedule

Companies Act [Sing], s. 216

For the plaintif - Nicholas Navaraon & Jane Chan; M/s Izral Partnership
For the 1st-10th defendants - Ganesan Nithi & Alicia Gomez, M/s Tommy Thomas
For the 11th defendant - Peter Douglas & Manpreet Sandhu; M/s Peter Ling & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Elaine Yap Chin Gaik JC:

Introduction

[1] This is an unusual case of an oppression claim filed under s. 346 of the Companies Act 2016 ('CA') by the majority shareholders of a company who also control the Board of Directors and the management of the company. The first defendant, Stronghold Cycles Sdn Bhd ('Stronghold'), is the subject company and is named as a nominal party represented by the same solicitors representing the plaintiffs.

[2] It is convenient to identify the parties by their names, affiliations and alliances:

Majority Shareholders	The Plaintiffs, Ng Chik Voon, Tan Swee Hoe, Koay Kuan King and Cheng Ten Siong, collectively hold 85% of the shares in Stronghold
Didi Resources	The 2nd Defendant, Didi Resources Sdn Bhd, holds 15% of the shares in Stronghold
Didi Group	The 2nd to 5th Defendants, Didi Resources, Didi Automotive Sdn Bhd, Didi Motorcyles Sdn Bhd and Didi Lifestyle Pte Ltd
GB Group	The 6th to 9th Defendants, GB Motors Realty Sdn Bhd, Goh Brothers Motorcycles Sdn Bhd (now known as Telagamas Mobility Sdn Bhd), Goh Brothers Capital Sdn Bhd and Telagamas Capital Sdn Bhd
KS Goh	The 10th Defendant, Goh Kian Sin, a director and the person said to have indirect control of all the entities in the GB Group and Didi Group, and Didi Resource's original nominee director on the Board of Stronghold
Juan	The 11th Defendant, Juan Chow Wee, Didi Resource's nominee director on the Board of Stronghold who replaced KS Goh

[3] There are two related actions at the Shah Alam High Court which have been filed by the parties, namely:

(i) BA-22NCvC-75-02/2023 filed by Stronghold and the majority shareholders against KS Goh, Juan, Didi Resources, Messrs Shaw & Co (a law firm) and Goh Brothers Motorcycles Sdn Bhd ('Suit 75'); and

(ii) BA-22NCvC-87-02/2024 filed by Goh Brothers Motorcycles Sdn Bhd against Stronghold and the majority shareholders ('Suit 87').

[4] The defendants have all applied to strike out the action *vide* three separate applications:

(i) enclosure 29 - filed by Didi Resources and Didi Automotive Sdn Bhd;

(ii) enclosure 32 - filed by KS Goh, Didi Motorcyles Sdn Bhd, Didi Lifestyle Pte Ltd and GB Group; and

(iii) enclosure 34 - filed by Juan.

[5] In this judgment, the "plaintiffs" refer to the majority shareholders and the "defendants" refer collectively to the Didi Group, the GB Group, KS Goh and Juan.

Background Facts

[6] According to the plaintiffs, Stronghold was incorporated on 24 February 2016 to operate the business of importing premium foreign motorcycles for sale through distributorships and dealerships. This followed from discussions held in 2015 between the promoters of Stronghold, namely KS Goh and the plaintiffs.

[7] The plaintiffs allege that the discussions culminated in an arrangement when Stronghold was incorporated ('arrangement') which in substance would include the following mutual understanding:

(i) KS Goh would nominate Didi Resources to hold his shares;

(ii) Didi Resources would be the entity to apply for the franchise-approved permits to import the motorcycles as required from the Ministry of International Trade and Industry, and do so on behalf of Stronghold;

(iii) a curated motorcycle-themed lifestyle and event space branded as "The Gasket Alley" would be set up;

(iv) Stronghold would rent the space for "The Gasket Alley"; and

(v) Ng Chik Voon, one of the plaintiffs who was in the midst of securing the distributorship for Zero Engineering motorcycles through his own company, would treat that distributorship as the start of business for Stronghold, to be followed by other motorcycle brands.

[8] The plaintiffs thus contend that Stronghold was formed as a *quasi*-partnership with a legitimate expectation on the part of the plaintiffs that the arrangement would be honoured by KS Goh and Didi Resources.

[9] The following events transpired in line with the arrangement:

(i) the Zero Engineering distributorship was reissued to Didi Resources on 20 November 2015 and Didi Resources applied for and obtained other distributorships;

(ii) Didi Resources subsequently secured the Piaggio Group Distributorships, Harley Davidson Distributorships and Royal Enfield Distributorship; and

(iii) Stronghold invested in and set up "The Gasket Alley."

According to the plaintiffs however, the defendants carried out various other acts that were not in line with the arrangement. They may be summarised as follows:

(i) breach of the legitimate expectation regarding the arrangement importing, distributing and dealing with the premium foreign motorcycles for entities other than Stronghold, in breach of the arrangement;

(ii) development of other hubs similar to The Gasket Alley developing the impugned hubs despite being advised against it and/or without procuring prior agreement, consent, authorisation or acquiescence from Stronghold and/or the plaintiffs;

(iii) setting up of rival companies in competition with Stronghold setting up and/or causing the setting up and/or running of the companies in competition with Stronghold.

[10] The complaints arose from, among others, the following allegations:

(i) Didi Resources appointed Goh Brothers Motorcycles Sdn Bhd as the dealer for the Harley Davidson and Royal Enfield motorcycles;

(ii) Didi Automotive Sdn Bhd and Didi Motorcycles Sdn Bhd are the apparent distributors of the Moto Guzzi and Royal Enfield distributorships;

(iii) Didi Resources and/or Didi Automotive Sdn Bhd obtained the Triumph Distributorship after KS Goh advised Stronghold against pursuing it;

(iv) KS Goh, Juan and/or Didi Resources asked Stronghold to give up its showroom at The Gasket Alley;

(v) KS Goh and/or Juan developed other hubs under the brand "The Gasket Alley" at other locations to the exclusion of Stronghold; and

(vi) Didi Lifestyle Pte Ltd and Telagamas Capital Sdn Bhd applied for trademark registration of the "The Gasket Alley" brand in Singapore and Malaysia.

[11] The plaintiffs say the above acts can be characterised as being: (i) oppressive to; (ii) in disregard of the interests of; (iii) unfairly discriminatory against; or (iv) otherwise prejudicial to them. This and whether the underlying facts are true are matters to be determined on the substantive originating summons.

[12] It is not disputed that the same allegations have been made by the plaintiffs against some of the defendants, namely KS Goh, Juan, Didi Resources and Goh Brothers Motorcycles Sdn Bhd in Suit 75.

Analysis And Findings

[13] The grounds cited by the defendants in the three applications to strike out this action have the following common issues:

(i) majority in control

whether this case fits the situation of an oppressed majority under s. 346 of the CA;

(ii) proper plaintiff rule/rule against reflective loss

whether the wrong complained of by the plaintiffs is a corporate wrong to Stronghold or to them as shareholders, and whether the resulting injury is suffered distinctly by the plaintiffs in such capacity;

(iii) abuse of process

whether there is a duplicity of proceedings in the light of Suit 75 and therefore an abuse of process.

[14] The other grounds for striking out are as follows:

(iv) liability of director

whether Juan can be held liable under s. 346 of the CA; and

(v) delay

whether the plaintiffs may bring an oppression claim based on conduct that the plaintiffs have been aware of since 2017.

Majority In Control

[15] For the purpose of their application to strike out the claim, the defendants all submitted that the originating summons is a non-starter because the plaintiffs are the majority shareholders in control of the Board and management of Stronghold as it is antithetical to the statutory intent of the remedy under s. 346 of the CA.

[16] As a start, it is not controversial that the remedy under s. 346 of the CA is available to majority shareholders who, due to restrictions to their voting rights or rights of management, are hamstrung in the face of conduct by an effectively controlling faction that are considered to be oppressive, in disregard of their rights and/or unfair prejudicial to them. See *Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application* [1994] CLJU 279; [1994] 1 LNS 279; [1994] 2 MLJ 789:

> In *Ramashankar Prosad & Ors v. Sindh Iron Foundry (P) Ltd & Ors*,[11] when dealing with the Indian provision which is the equivalent of s. 210 of the UK Act, it was held that the Indian section was not limited to minority shareholders. The reasoning is interesting. The UK s. 210 falls under the statutory heading written into the Companies Act 1948 entitled 'Minorities'. Such a heading is absent in the Indian provision and equally in our own provision. I would therefore agree with the view expressed by Mitter J in Ramashankar Prosad[11] and hold that relief under s. 181 is available to majority shareholders who are not in control of the management of the company and who, for any given reason, are unable to control the board, *eg*, because they have agreed to a management power sharing formula in a separate agreement among the shareholders.

[17] In this case, the plaintiffs suffer no such restrictions to either their voting rights or management control as they are an 85% supermajority with four out of five directors controlling the Board of Directors and the management of Stronghold. This is not disputed.

[18] In a nutshell, the plaintiffs assert that the failure to adhere to the arrangement between the promoters of Stronghold created an unfairly prejudicial situation that cannot be remedied other than by compelling the defendants to account for the diversion of business and allow the plaintiffs to realise their share value in a forced buy-out. In other words, they say their majority control is ineffective to otherwise remedy the situation.

[19] This court first considered whether control of the vote by majority shareholders disqualifies the plaintiffs under s. 346 of the CA as a matter of principle, rendering it a fundamental question of *locus standi*.

[20] Section 346 of the CA (and its predecessor, s. 181 of the Companies Act 1965) has been the subject of much litigation and the principles surrounding its application are well developed. It affords protection to the minority shareholder in response to the rule of the majority in the conduct of the affairs of the company according to *Foss v. Harbottle* (1843) 2 Hare 461.

[21] In addition to the majority rule, shareholders are not trustees for one and other and unlike directors, they generally occupy no fiduciary position and are under no fiduciary duties in relation to the company or other shareholders. Thus, they can influence the affairs of the company through their right to vote according to their own interest.

[22] Considering the purpose of the provision, the only recognised exceptions on the application of s. 346 of the CA by majority shareholders are as mentioned previously, *ie*, where their voting rights or rights of management by the majority shareholders are restricted.

[23] As an expression of the theory that the remedy under s. 346 of the CA should not be available to majority shareholders in control for practical reasons as well, both parties have referred to the case of *Ng Kek Wee v. Sim City Technology* [2014] SGCA 47 ('*Ng Kek Wee*'), cited in *The Bank Of Nova Scotia Bhd & Anor v. Lion DRI Sdn Bhd & Ors* [2021] 2 CLJ 400; [2021] 9 MLJ 473.

[24] In *Ng Kek Wee*, the Singapore Court of Appeal considered a claim under s. 216, Singapore's equivalent provision for s. 346 of the CA by the majority shareholder and held:

> [48] *In our judgment, the touchstone is not whether the claimant is a minority shareholder of the company in question but whether he lacks the power to stop the allegedly oppressive acts*. Section 216(1) of the Companies Act states only that 'any member ... of a company' may bring an action for relief under that provision; there is no further requirement that only members who are minority shareholders are so entitled. Having regard to the purpose underlying s. 216, we think the correct position is that *where a member is able to remedy any prejudice or discrimination he has suffered through the ordinary*

powers he possesses by virtue of his position, the conduct of the defendant cannot be said to be unfair to him: see also the *dicta* of Knox J in *Re Baltic Real Estate Ltd (No 2)* [1993] BCLC 503 at 507 ...

[49] *We think this is correct in principle. It would be contrary to the purpose and intent of s. 216 of the Companies Act to permit a shareholder to seek relief where he possesses the power to exercise self-help by taking control of the company and bringing to an end the prejudicial state of affairs*: see Re Legal Costs at 552. As was observed by Margaret Chew in *Minority Shareholders' Rights and Remedies* (LexisNexis, 2nd Ed, 2007) ('Chew') at pp. 219-220:

> *The pertinent issue is to ascertain whether an applicant alleging oppression under section 216 of the Companies Act has control over the affairs of the company, for there is good sense in saying that an applicant ought to lack such control*. Evidently, an applicant that is in control of the affairs of the company cannot convincingly allege to have been oppressed ...
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> (emphasis added)

[25] The court in *Ng Kek Wee* did not expressly say that self-help refers to exercise of the majority vote and that this can bring the prejudicial state of affairs to an end in all cases. It was recognised that:

(i) it is a question of fact whether in a particular case, a shareholder claiming relief lacks control over the affairs of the company; and

(ii) in ordinary cases where the shares carry equal voting rights, a majority shareholder will generally have the power to end the unfairly prejudicial conduct of the company's affairs.

[26] On the facts in *Ng Kek Wee*, the court held:

> [55] That, in our view, is the crux of the present case, and in our judgment, the fact that the Respondent has the majority voting power and was able to use it to take control of the company disentitles it from claiming relief under s. 216. The Judge was correct in observing that as managing director of Singalab International, the Appellant had effective day-to-day control over the company. This, however, should not have been the end of the analysis. As the Judge noted, the Respondent, being the majority shareholder of Singalab International, could have voted its representatives onto its board of directors and did in fact do so after the commencement of the Suit (see above at [21]). Once it had effective control of the board and the affairs of Singalab International in its hands, it could have removed the Appellant from the board, or caused the company to claim against the Appellant for the assets which had been improperly siphoned away ...
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> [58] To Mr Chan's credit, he conceded at the hearing before us that with the benefit of hindsight, the Respondent could have commenced proceedings for a different kind of relief. We note in this regard that

A Mr Chan and his firm were not involved in the trial below. He submitted, however, that the issue of whether the Respondent had control over the company was a "technicality" that did not cause any prejudice to the Appellant. With respect, this submission was misconceived. *The requirement that the shareholder (here the Respondent) claiming relief under s. 216 must be otherwise powerless to change its fate by taking control of the company is a substantive* B *one that goes to the very heart of the s. 216 process.*

(emphasis added)

[27] Thus, it would be fair to say that *Ng Kek Wee* did not introduce any new development in the law.

C **[28]** I have previously alluded to the fact that shareholders owe no fiduciary duties to the company or the other shareholders. However, it is not uncommon for shareholders to assume certain duties to each other, whether contractual or fiduciary in nature. An example might be a joint venture shareholder whose contribution is a critical element of the joint venture business and that commercial advantage may be used unfairly to prejudice D the other joint venture shareholder. Another example might be the arrangement in this case.

[29] The question that may be asked therefore, is whether there exists on the facts, a situation where the alleged oppression concerns an unfairly E prejudicial situation that cannot be resolved by a change of management or by any other available legal remedy, *eg*, where it is not possible to enjoin one shareholder to do what is promised in an informal arrangement.

[30] The plaintiffs submitted that despite their majority shareholding and management control, they are powerless to bring an end to the alleged F oppression, disregard of rights or unfair prejudice to them as majority shareholders because the filing of Suit 75 can only remedy past wrongdoing and they cannot stop the future diversion of business from Stronghold.

[31] In advancing the above argument, the plaintiffs concede that the arrangement and alleged oppressive acts are fully pleaded in Suit 75 as a G breach of fiduciary duties and conspiracy claim. In connection with those claims, the plaintiffs prayed for:

(i) declaratory orders, an account of profits from the diverted business; and

(ii) damages to be assessed, including damages on "Didi Resource's H oppressive or unfairly prejudicial conduct."

[32] Thus, if Suit 75 is found in the plaintiffs' favour, the plaintiffs will have succeeded in establishing that Didi Resources, KS Goh and Juan owed and breached their fiduciary duties to the plaintiffs and to Stronghold by acting in breach of the arrangement. If so:

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(i) there is in theory and logic no reason why the wrongdoers would persist in repeating the conduct complained of and be subject to repeated suits; and

(ii) there is also no explanation why it is not possible to enjoin Didi Resources to comply with the arrangement using other available legal principles and theories.

[33] Considering the facts of this case (and also true as a matter of general application), this court is of the view that the law affords adequate remedies for any breach of contractual or fiduciary duties between shareholders and ultimately, any allegation of oppression can be neutralised by the company in a general meeting directly or through ordinary legal proceedings against the oppressors.

[34] On the specific acts of oppression alleged in this case, this court takes the view that the plaintiffs are not powerless to bring the state of affairs complained of to an end without a buy-out order because Suit 75 is capable of providing a complete remedy. In both actions, it is apparent that what the plaintiffs are after is full compensation in money terms, whether as purchase consideration for the shares of Stronghold in a buy-out, or as an account of profits or damages in Suit 75.

[35] To recap what was earlier observed, the plaintiffs assert that the defendants must account for the diversion of business and allow the plaintiffs to realise their share value in a forced buy-out. Other than the forced buyout, this is precisely what the plaintiffs have sought in Suit 75.

[36] For the above reasons, this court is prepared to find as a matter of principle that the remedy under s. 346 of the CA is not available to majority shareholders in control. This is supported by the fact that other prevailing laws already provide adequate remedies to a majority shareholder who is aggrieved by the conduct of the minority shareholder.

Proper Plaintiff Rule/Rule Against Reflective Loss

[37] As a separate ground for striking out, the defendants also submitted that this action is unsustainable as it offends the proper plaintiff rule and the rule against reflective loss in company law.

[38] The proper plaintiff rule is derived from the first principle in *Foss v. Harbottle* (1843) 2 Hare 461. It describes the company law principle that where a wrong is committed against a company, the proper plaintiff is the company and not its shareholders (or directors). This is because the company is a separate legal entity with its own rights to sue.

[39] The rule against reflective loss states that no action lies at the suit of a member suing in that capacity to make good a diminution in the value of his shareholding, where it is merely a reflection of the loss suffered by the company. See *Koh Jui Hiong & Ors v. Ki Tak Sang & Another Appeal* [2014] 2 CLJ 401; [2014] 3 MLJ 10; *Mak Siew Wei v. Yeoh Eng Kong & Other Appeals* [2019] 7 CLJ 470; [2020] 1 MLJ 258.

[40] In *Low Cheng Teik & Ors v. Low Ean Nee* [2024] 9 CLJ 171; [2024] 5 MLJ 580 ('*Low Cheng Teik*') the Federal Court recently restated the parameters of an oppression action (s. 346 of the CA) and a derivative action (s. 347 of the CA) to avoid any improper circumvention of the proper plaintiff rule in a shareholder action. The Federal Court held:

> [95] In summary, the legal 'test' provides that where the nature of the act, omission or misconduct is oppressive or unfairly prejudicial to a shareholder, and the resulting injury and loss may be classified as having been suffered directly and specially or separately and distinctly by the shareholder in such capacity, as opposed to loss or injury suffered by the company or all the other shareholders, then oppression is made out and the cause of action vests in the shareholder. In such an instance, s. 346 provides the remedies available.
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> [96] If, however, the act, omission or misconduct is an injury done to the company, resulting in a loss to the company, then the cause of action vests in the company and s. 347 is the proper remedy to be utilised. This situation arises commonly where the injury causes loss to all shareholders alike such that it cannot be said that the loss is suffered distinctly, separately or uniquely by any single shareholder.

[41] The rationale for the rule against reflective loss was also clarified in *Low Cheng Teik*, referring to the United Kingdom Supreme Court decision in *Marex Financial Ltd v. Sevilleja (All Party Parliamentary Group on Fair Business Banking intervening)* [2021] AC 39; [2020] UKSC 31:

> [113] The judgment in Marex has the effect of reaffirming the narrow and bright-line rule of law that prevents a shareholder from claiming damages on the basis of a fall in the value of his or her shares or by reference to a reduction in dividends, where the company has a claim against the same defendant for the same wrongful action. There are, moreover, no exceptions whether or not the company pursues its own claim. **Underlying this rule is the rationale that the shareholder does not suffer a loss that is distinct from that of the company**. Permitting a shareholder to bring such a claim would contravene the rule in *Foss v. Harbottle*, namely, that only the company can bring a claim which belongs to it ...
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> [125] We reiterate that an oppression action can only be properly advanced where a minority shareholder has suffered a loss which is separate and distinct from the loss to the company, that is, to all the shareholders collectively.

[42] Thus, a wrong that causes loss to the company is suffered by all shareholders alike as a reflective loss, and this is not recoverable by a particular shareholder as a personal action under s. 346 of the CA. Such an action is only available if it can be said that the loss is suffered distinctly, separately or uniquely by that shareholder.

[43] To recap, the alleged oppressive acts are described by the plaintiffs as follows:

(i) breach of the legitimate expectation regarding the arrangement;

(ii) development of other hubs similar to The Gasket Alley; and

(iii) setting up of rival companies in competition with Stronghold.

[44] To the extent that the above complaints are premised on the diversion of business opportunities away from Stronghold, this court has no difficulty characterising the alleged oppressive acts as giving rise to a cause of action by Stronghold against the named fiduciaries (KS Goh and Juan) and against the other defendants (the Didi Group and the GB Group) for their alleged participation.

[45] The factual situation in *Low Cheng Teik* is conceptually similar as this case in that the alleged oppressors had unilaterally assigned trademarks belonging to the company to third-party companies controlled by them. It was argued that:

(i) the claimant was affected personally since the ultimate beneficiaries of that other entity were the alleged oppressors themselves; and

(ii) a derivative action will not redress the complaint since a corporate action will only result in damages paid back into a company that remains under the control of the oppressors.

but the Federal Court nonetheless concluded that the oppression action in that case was not made out because:

> [126] ... the depletion of the company's assets due to a wrong done to the company does not amount to a personal injury to its shareholders. It is for the company to initiate an action to recover such loss. The shareholder is taken to have entrusted the management of the company's affairs to the majority shareholders. If the loss to the company is caused by those in control of the company themselves who refuse to take steps to recover such loss, the proper recourse is for the minority shareholder to seek leave from the court to bring a derivative action in order to enforce the company's rights.

[46] The plaintiffs similarly argued that the loss was not suffered by all shareholders collectively because the defendants have gained from their loss. Based on the finding in *Low Cheng Teik* however, the gain by the oppressors according to their interest in the third-party entities that benefited from their wrongdoing did not factor in the closed equation of losses to the company and reflective loss to the shareholders. It is for the company to recover the losses from the wrongdoers whose advantage is thereby neutralised.

[47] This court has also considered more carefully the complaint about the alleged breach of the arrangement by Didi Resources and its perceived commercial unfairness to the plaintiffs. If it is the plaintiffs' case that this is not Stronghold's cause of action or that it can be actionable by both Stronghold and the plaintiffs, the short answer is that the plaintiffs have also sued on the arrangement on their own behalf in Suit 75 for breach of fiduciary duties by KS Goh and/or Didi Resources.

[48] The plaintiffs' claims in Suit 75 raise issues consistent with those discussed in the Federal Court decision in *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors And Another Appeal* [2013] 2 CLJ 277; [2013] 2 MLJ 297 ("*Jet-Tech*") that a shareholders' agreement and breach of the same are private matters enforceable by the parties to the shareholders agreement. For such complaints, the s. 346 of the CA remedy is not available.

[49] *Jet-Tech* was explained in *Queensway Nominees (Asing) Sdn Bhd & Ors v. ISM Sendiran Bhd & Another Case* [2024] CLJU 2544 as follows:

> [53] The Federal Court in *Jet Tech* (*supra*) further deliberates that if a party intends to rely on a shareholder's agreement and not the M & A to establish that the conduct was unjust and inequitable pursuant to s. 181 of the CA 1965, then, it can only be done in the Ebrahimi quasi-partnership scenario.

[50] As it is understood therefore, any breach of the arrangement between the shareholders inter se may be actionable under s. 346 CA if that breach amounts to conduct that is unjust and inequitable in an *Ebrahimi quasi*-partnership scenario per Lord Wilberforce in *Ebrahimi v. Westbourne Galleries* [1972] 2 All ER 492. In such case, equitable considerations may apply to make it unjust for one shareholder to insist on legal rights or to exercise them in a particular way.

[51] The plaintiffs premise their oppression claim here on the existence of a *quasi*-partnership scenario evidenced by the arrangement. Having reviewed the facts in detail however, this court concluded that it is a non-issue whether or not Stronghold is a *quasi*-partnership because the aspect of the arrangement said to have been breached is still in essence, the diversion of business opportunities from Stronghold. The proper plaintiff rule would still apply.

[52] Thus, this court finds that the wrong complained of by the plaintiffs is a corporate wrong to Stronghold and the resulting injury is suffered to the same extent by all the shareholders, with the account and recovery of the unfair gains allegedly made by the wrongdoers being remedies properly belonging to Suit 75.

Abuse Of Process

[53] The plaintiffs do not deny that the same findings of facts will have to be made by the court in this action as in Suit 75. However, the plaintiffs say there is no abuse of process because an oppression action under s. 346 of the CA must proceed *via* originating summons procedure, seeks different remedies and was always intended to be consolidated with Suit 75.

[54] On this point, I have considered the argument advanced by the plaintiffs based on *Tai May Chean v. New Way Capital Sdn Bhd & Anor And Another Appeal* [2019] 9 CLJ 477; [2020] 12 MLJ 471 ('*Tai May Chean*') that the same set of facts may give rise to both a derivative action and shareholders' oppression action and therefore, it is not an abuse of process for the plaintiffs to pursue both Suit 75 and this action.

[55] Assuming that the alleged breach of the arrangement and the actions complained about can give rise to both a derivative action (or one pursued directly by Stronghold) and a shareholder's oppression action, the question must still be asked whether the duplicity of proceedings, *ie*, the filing of two separate suits, was borne out of necessity. As noted by the Court of Appeal in *Tai May Chean*:

> [28] So, in our view, the question the learned judge ought to have asked himself was whether the instant OS amounted to oppressive and unnecessary litigation giving rise to the overwhelming supposition that it was an abuse of the court process ...
>
> [29] On this score, it is imperative to note that there are distinguishing factors between a minority oppression suit (then under s. 181 of the CA 1965 and now under s. 346 of the Companies Act 2016 ('the CA 2016')) and a derivative action. A shareholder, like the plaintiff here, may find relief problematic due to the twin hurdles of the 'majority rule' and the 'proper plaintiff rule' as decided in the celebrated case of *Foss v. Harbottle* [1843] 67 ER 189.
>
> [30] The shareholder, in that event, can bring an oppression suit under s. 346 of the CA 2016. That provision gives a wide latitude to the courts to fashion various remedies to bring to an end the oppressive conduct. Or the shareholder can bring a derivative action on behalf of the company. As it is an action brought on behalf of the company, the cause of action, as well as the remedy, is relevant to the company only. By protecting the company in this way, the shareholder benefits indirectly. Significantly, the relief available in this action may be different to that of an oppression action.

[56] In this case, I have already found that the plaintiffs are the majority in control who have no *locus standi* to start a s. 346 of the CA action at all. Further, they have already commenced Suit 75 for the remedy they seek on behalf of Stronghold and to the extent the plaintiffs have any other direct loss

recoverable from Didi Resources as an alleged fiduciary, that too has been pleaded in Suit 75. All of the third parties named in this action can also be impleaded in Suit 75.

[57] Thus, the irresistible conclusion is that there is no necessity for this action. As the plaintiffs must admit, they have literally pleaded and prayed for damages for oppression and unfair prejudice in Suit 75. The only feature of this action that was belatedly filed eight months after Suit 75 was filed, is the buy-out remedy only available under s. 346(2) of the CA. On this, I have also found that Suit 75 is capable of providing a complete remedy because what the plaintiffs are after is compensation in money terms which can be achieved to the same extent in either action.

[58] If the plaintiffs maintain that it is proper to seek remedies under, s. 346 of the CA as the only means capable of bringing an end to the oppression *ie*, by compelling the minority shareholder to buy out the plaintiffs, then equally it must be said that there would be no necessity for Suit 75 because the plaintiffs can fashion wide-ranging remedies that include those sought in Suit 75. The plaintiffs could have and should have proceeded entirely by way of the oppression action instead of filing Suit 75 at all.

[59] The point is that the plaintiffs have not shown the necessity for maintaining both actions. Section 25(2) of the Courts of Judicature Act 1964 read together with item 11 of the Schedule to the Act expressly recognises that a multiplicity of proceedings is regarded as abuse of process:

> Power to dismiss or stay proceedings where the matter in question is res judicata between the parties or where by reason of multiplicity of proceedings in any court or courts the proceedings ought not to be continued.

[60] Considering the timing of this action after the filing of Suit 75, this court finds that it was filed exclusively to seek a buy-out order as an afterthought and this is an abuse of process. The filing of oppression actions for collateral purposes are not unprecedented. On the buy-out order, the Federal Court in *Low Cheng Teik* has this to say:

> [87] This strict delineation is necessary to prevent shareholders from bringing an oppression action for ancillary purposes, that is, in situations where there is no unfairly prejudicial conduct affecting their interests qua shareholder. The oppression remedy is not available where a minority shareholder simply wishes to leave and take their investment in the company with them or to sell their shares without a discount to reflect their minority shareholding (see: Suying Design at para [36]). Nor can the remedy be used as a tool to take control of or break up the company.

[88] As stated by Loh Siew Cheang in *Corporate Powers Accountability* (LexisNexis, 3rd Edn, 2018) at 9-384:

> In *Re a Company* [1983] BCLC 126, Lord Grantchester QC held that s. 75 of the Companies Act 1980 (UK) [the then UK equivalent of an oppression action under s 346 of our Companies Act] was not enacted to enable a 'locked-in' minority shareholder to require the company to buy him out ...

Other Grounds

[61] I will address briefly the striking out application by Juan on his independent ground for striking out that he is merely the nominee director of Didi Resources on the Board of Directors of Stronghold, and that he is neither a shareholder nor is he involved in the management of Stronghold.

[62] The plaintiffs argue that Juan is impleaded on account of his role in facilitating Didi Resources' actions and can be held independently liable for that role, either as a director of Stronghold or as a third party based on *Auspicious Journey Sdn Bhd v. Ebony Ritz Sdn Bhd & Ors* [2021] 4 CLJ 721.

[63] However, it is safe to say that Juan's striking out application (encl. 34) will stand or fall together with the others (encls. 29 and 32) on the common grounds for striking out.

[64] On the grounds of delay in bringing this action after the acts complained of, I think that is factually sensitive and have therefore not dealt with it.

Conclusion

[65] In conclusion, I allow all three striking out applications in encls. 29, 32 and 34 with costs. I award global costs to the second to tenth defendants for encls. 29 and 32 in the sum RM40,000 and costs to the 11th defendant for encl. 34 in the sum of RM20,000.